JOHN M. SORICH (CA Bar No. 125223)
jsorich@adorno.com
S. CHRISTOPHER YOO (CA Bar No. 169442)
cyoo@adorno.com
ADORNO YOSS ALVARADO & SMITH
A Professional Corporation
1 MacArthur Place, Suite 200
Santa Ana, California 92707
Tel: (714) 852-6800
Fax: (714) 852-6899

Attorneys for Defendant
DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR MORGAN STANLEY LOAN TRUST 2006-HE4

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CODY NICHOLS, an individual,

Plaintiffs,

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY, as Trustee For Morgan Stanley Loan Trust 2006-HE4, an entity of unknown form; DECISION ONE MORTGAGE COMPANY, LLC, a North Carolina Limited Liability Company; and DOES 10-10, inclusive

Defendants.

CASE NO.: 07CV2039-L (NLS)

ANSWER OF DEFENDANT DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR MORGAN STANLEY LOAN TRUST 2006-HE4'S TO THE COMPLAINT

ACTION FILED: October 19, 2007

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ATTORNEYS AT LAW
SANTA ANA

Defendant Deutsche Bank National Trust Company, as Trustee for Morgan Stanley Loan Trust 2006-HE4 (Deutsche) hereby for itself and no other defendant answers the complaint ("Complaint") of plaintiff Cody Nichols ("Nichols" or "Plaintiff") as follows:

I. INTRODUCTION

1. In response to paragraph 1 of the Complaint, Deutsche states that the statutes speak for themselves. Furthermore, Plaintiff is not seeking the admission of a fact, therefore, Deutsche does not admit or deny.

II. JURISDICTION

2. In response to paragraph 2 of the Complaint, Deutsche states that the statutes speak for themselves. However, Deutsche admits that this Court has jurisdiction and that the venue is proper.

III. COMMON ALLEGATIONS

3. In response to paragraph 3 of the Complaint, Deutsche admits that Nichols is the plaintiff in this action. Additionally, Deutsche admits that the public record discloses that Nichols is the legal owner of the property located at 2010 Rancho Manzanita Boulevard, California 91905 ("Subject Property"). Except as expressly admitted herein, Deutsche lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth in this paragraph and therefore denies.

4. In response to paragraph 4 of the Complaint, Deutsche admits that the public record discloses that Decision One Mortgage Company, LLC is a North Carolina limited liability company. Except as expressly admitted herein, Deutsche lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies.

5. In response to paragraph 6 of the Complaint, Deutsche states that it is a limited purpose trust company. Except as expressly stated herein, Deutsche denies.

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6. In response to paragraph 6 of the Complaint, Deutsche lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in said paragraph and therefore denies.

7. In response to paragraph 7 of the Complaint, Deutsche denies.

IV. COMMON FACTUAL ALLEGATIONS

8. In response to paragraph 8 of the Complaint, Deutsche incorporates into this response as though fully set forth herein each of its responses to paragraphs 1 through 7.

9. In response to paragraph 9 of the Complaint, Deutsche admits that on or about February 24, 2006, Decision One Mortgage Company LLC ("Decision One") made a loan in the sum of $294,000.00 ("Subject Loan") to Nichols. Pursuant to the terms of the Subject Loan, Nichols was required to make monthly principal payments under an adjustable rate note. The Loan is secured by a first deed of trust and the loan is payable with interest. Except as expressly admitted herein, Deutsche lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth in this paragraph and therefore denies.

10. In response to paragraph 10 of the Complaint, Deutsche denies.

11. In response to paragraph 11 of the Complaint, Deutsche admits that the loan became assigned to Deutsche on or about February 24, 2006 and that the loan is currently being serviced by American Servicing Company.

12. In response to paragraph 12 of the Complaint, Deutsche admits that a letter was sent to Deutsche. Except as expressly admitted herein, Deutsche denies.

13. In response to paragraph 13 of the Complaint, Deutsche admits that a letter was received by Deutsche. Deutsche further admits that the Trustee's sale was scheduled for October 30, 2007. Except as expressly admitted herein, Deutsche denies.

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FIRST CAUSE OF ACTION

(TILA)

(Against All Defendants)

14. In response to paragraph 14 of the Complaint, Deutsche incorporates into this response as though fully set forth herein each of its responses to paragraphs 1 through 13.

15. In response to paragraphs 15 of the Complaint, Deutsche states that the statutes speak for themselves and call for a legal conclusion. Because the admission or denial of facts is not requested, Deutsche cannot admit or deny.

16. In response to paragraph 16 of the Complaint, Deutsche states that the statutes speak for themselves. However, Deutsche denies.

17. In response to paragraph 17 of the Complaint, Deutsche states that the statutes speak for themselves. However, Deutsche denies.

18. In response to paragraph 18 of the Complaint, Deutsche admits that it received a letter purporting to rescind the transaction. Except as expressly admitted herein, Deutsche denies.

19. In response to paragraph 19 of the Complaint, Deutsche states that the statutes speak for themselves. However, Deutsche denies.

20. n response to paragraph 20 of the Complaint, Deutsche states that the statutes speak for themselves. However, Deutsche denies, including all subparts.

SECOND CAUSE OF ACTION

(QUIET TITLE)

(Against All Defendants)

21. In response to paragraph 21 of the Complaint, Deutsche incorporates into this response as though fully set forth herein each of its responses to paragraphs 1 through 20.

22. In response to paragraphs 22 of the Complaint, Deutsche admits that it has a beneficial interest in the Subject Property and that Plaintiffs are seeking quiet title against Deutsche's interest in the Subject Property.

23. In response to paragraphs 23 of the Complaint, Deutsche admits that Plaintiff is seeking quiet title, but states that Plaintiff is not entitled to quiet title.

As separate and distinct affirmative defenses to the Complaint on file in this action, Deutsche alleges as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State Cause of Action)

24. The Complaint, and each cause of action contained therein, fails to set forth facts sufficient to constitute a cause of action against Deutsche.

SECOND AFFIRMATIVE DEFENSE

(Estoppel)

25. Plaintiff is estopped from asserting and/or recovering on any claims against Deutsche by reason of Plaintiff's own acts, omissions, and conduct.

THIRD AFFIRMATIVE DEFENSE

(Waiver)

26. Plaintiff is barred by the equitable doctrine of waiver from asserting any claim against Deutsche.

FOURTH AFFIRMATIVE DEFENSE

(Unclean Hands)

27. Plaintiff is barred by the equitable doctrine of unclean hands from asserting any claim against Deutsche.

FIFTH AFFIRMATIVE DEFENSE

(Compliance with Contract and Law)

28. The Complaint, including each cause of action contained therein, is barred by virtue of the fact that Deutsche has fully performed, discharged, and satisfied all obligations and duties imposed upon it by the subject agreement and law.

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SIXTH AFFIRMATIVE DEFENSE

(Privilege)

29. The Complaint, including each cause of action contained therein, is barred by virtue of the fact that all of the acts alleged therein to have been performed by Deutsche was privileged or justified, if performed at all.

SEVENTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

30. The Complaint and/or each and every purported cause of action contained therein, is barred because Plaintiff would be unjustly enriched if he prevailed on this Complaint.

EIGHTH AFFIRMATIVE DEFENSE

(Laches)

31. Deutsche alleges on information and belief that Plaintiff unreasonably delayed bringing his Complaint, and/or each and every cause of action contained therein, to the prejudice of Deutsche, and therefore, the Complaint is barred under the doctrine of laches.

NINTH AFFIRMATIVE DEFENSE

(No TILA Violations on the Face of the Documents)

58. Plaintiff cannot state a claim for violation of TILA because there were no violations of TILA on the face of the disclosure statements.

TENTH AFFIRMATIVE DEFENSE

(Assumption of Risk)

32. Deutsche is informed and believe and based thereon allege that Plaintiff knew or should have known that their failure to comply with the terms of the deed of trust and the note would lead to foreclosure of the Subject Property, and therefore, Plaintiff is estopped from asserting any adverse claim in the Complaint against Deutsche.

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ELEVENTH AFFIRMATIVE DEFENSE

(Comparative Fault)

33. Plaintiff's recovery, if any, must be reduced proportionately to the extent that any damages alleged by Plaintiff are caused and contributed to by Plaintiff's own action.

TWELFTH AFFIRMATIVE DEFENSE

(Absence of Fault)

34. The Complaint, and/or each and every cause of action contained therein, is barred by Plaintiff's failure to take actions to avoid their damages, if any.

THIRTEENTH AFFIRMATIVE DEFENSE

(Consent)

35. The Complaint, and/or each and every cause of action contained therein, is barred by Plaintiff's consent.

FIFTEENTH AFFIRMATIVE DEFENSE

(No Valid Notice of Rescission)

36. The letter dated October 16, 2007 was not a valid notice of rescission that triggered TILA.

SIXTEENTH AFFIRMATIVE DEFENSE

(Rescission Procedures Not Triggered)

37. TILA's rescission procedures are only triggered upon acceptance of a notice of rescission or adjudication that rescission is proper. Because Deutsche did not accept any notice of rescission and there has been no adjudication, TILA's rescission procedures were not triggered.

SEVENTEENTH AFFIRMATIVE DEFENSE

(No Statutory Damages Available)

38. Plaintiff is not entitled to statutory damages pursuant to TILA because Deutsche is an assignee of the Subject Loan.

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EIGHTEENTH AFFIRMATIVE DEFENSE

(The Statute of Limitations has Expired)

39. Plaintiff is not entitled to damages pursuant to TILA for violations on the face of the disclosure statements because the one year statute of limitations has expired.

NINETEENTH AFFIRMATIVE DEFENSE

(Absence of Fault)

40. The Complaint, and/or each and every claim for relief contained therein, is barred by Plaintiff's failure to take actions to avoid his damages, if any.

TWENTIETH AFFIRMATIVE DEFENSE

(Plaintiff's own actions)

41. The omissions, conduct and voluntary acts of Plaintiff proximately caused, or otherwise contributed to, the matters of which they complain.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(No Proximate Cause)

42. The Complaint, and/or each and every claim for relief contained therein, is barred on the ground that the alleged breach and/or act(s) of Deutsche was not the proximate cause of Plaintiff's alleged damages, if any, and Plaintiffs were not injured or damaged in fact by any of the acts alleged.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Fraudulent Conduct)

43. The Complaint, and/or each and every claim for relief contained therein, is barred by virtue of fraudulent conduct of the Plaintiff.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Public Policy)

44. Plaintiff's claims for relief are barred as a matter of public policy.

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TWENTY-FOURTH AFFIRMATIVE DEFENSE

(No Forfeiture of Plaintiff's Obligation to Return Loan Proceeds)

45. Plaintiff's prayer for forfeiture of return of loan proceeds is barred as a matter of 9th Circuit law.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Plaintiffs' Failure to Comply with Requirements)

46. The Complaint, and/or each and every cause of action contained therein, is barred by Plaintiffs' failure to comply with all requirements for any other remedy sought in the Complaint.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Additional Affirmative Defenses)

47. Deutsche reserves its right to assert additional affirmative defenses in the event discovery and/or investigation indicates that additional affirmative defenses are applicable.

WHEREFORE, Deutsche prays:

1. That Plaintiffs take nothing by their Complaint;
2. For dismissal of the Complaint with prejudice;
3. For attorneys' fees and costs of suit incurred; and
4. For such other and further relief as the Court may deem just and proper.

DATED: December 27, 2007

ADORNO YOSS ALVARADO & SMITH
A Professional Corporation

By: S. Christopher Yoo
S. CHRISTOPHER YOO
Attorneys for Defendant
DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR MORGAN STANLEY LOAN TRUST 2006-HE4

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